

ORIGINAL

Decision No. 17820.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of Napa Union High School District  
of Napa County for an Order  
authorizing the construction of a  
Public Street or Crossing over the  
Tracks of the San Francisco, Napa  
and Calistoga Railway.

Application No. 12338.

L. E. Johnston, Deputy District Attorney,  
for Napa Union High School District,

C. E. Brown, for San Francisco, Napa and  
Calistoga Railway.

BY THE COMMISSION:

O P I N I O N

In this application the Napa Union High School asks permission to construct a public crossing leading from Jefferson Street into the school grounds at grade across the tracks of the San Francisco, Napa and Calistoga Railway.

A public hearing was held at Napa on September 22nd, 1926, before Examiner Austin, at which time the matter was submitted. At the hearing the application was amended at request of applicant to cover either the installation of a private crossing or a public crossing, depending on which the Commission considered legal and proper in the premises.

The Napa Union High School District has forty acres of ground on the northwest corner of Lincoln Street and Jefferson Street, also known as Calistoga Avenue, near the northwesterly city limits of Napa. The high school faces on Jefferson Street, but has two side entrances leading from Lincoln Avenue to the building,

one of which is close to the intersection of Lincoln and Jefferson Streets. The tracks of the electric railroad are parallel to Jefferson Street and lie between the paved portion of that street and the high school grounds. The railroad owns a thirty foot strip of right of way for a distance of about 600 feet north of Lincoln Avenue. North of this strip the railroad lies in the right of way of Jefferson Street which is a county highway and outside of the city limits. The main line of the railroad lies in Jefferson Street outside of the strip of right of way above mentioned, the strip of right of way being occupied by a siding.

The proposed crossing is about 780 feet north of the center line of Lincoln Avenue, and is north of the 600-foot strip of private right of way and is entirely included within the right of way of the county road.

The proposed crossing is desired in order to round out and complete the driveways on the school grounds and furnish a means of ingress and egress to the north to and from the grounds. Under present conditions vehicles must turn around on the grounds which causes confusion and congestion.

The high school has an average daily attendance of 460. In addition, night school is held in the school house five nights a week with an attendance of from 100 to 150 and public meetings are also held weekly at night with an attendance of about 1000 persons.

The school hours are from 8:30 A.M. to noon and from 1:00 P.M. to from 3:00 to 5:00 P.M. Trains are operated in this vicinity at about 8:20, 8:55 and 11:13 A.M. and at 12:16, 1:26, 3:12 and 4:00 P.M. Night trains are operated northbound at 7:03 and 9:19 P.M. and southbound at 8:06 P.M. There are 9 trains each way daily, of which 7 are passenger trains and 2 are freight

trains. There are also about 6 extra trains per week. There is a station stop about two blocks south. At the site of the proposed crossing northbound trains have a speed of from 15 to 18 miles per hour and southbound trains a speed of from 20 to 25 miles per hour.

The view of the proposed crossing is unobstructed for traffic in both directions but traffic on Jefferson Avenue is parallel to the railroad and a driver must look back to see cars approaching the crossing from the same direction. Under ordinary conditions standard crossing sign protection would appear all that would be necessary for a crossing of this character, but due to the kind of traffic here and the fact that trains are operated over this track at approximately the time of opening and closing school, it would appear to require further protection during certain hours. The high school authorities stated that a man might be made available to protect the crossing during the hours school is taking up or letting out and such protection seems advisable.

The railroad company offered no objection to the opening of the crossing and it appears to the Commission that the application should be granted if the Commission can legally do so.

Section 43 of the Public Utilities Act vests in the Commission exclusive jurisdiction to determine applications for the construction of any "public road, highway or street" across the track of any railroad corporation at grade, and prohibits the construction of such a crossing without the Commission's sanction. Rule VIII, subdivision 7 of our Rules of Procedure provides that applications for the installation of a crossing of a public highway across a railroad must be made by the proper municipal, county, state or United States authorities.

The applicant, however, does not rely upon these provisions, but contends that it is entitled to this crossing under the provisions of Section 485a., Civil Code, which reads as follows:

"The owner or owners of any lands along or through which any railroad is constructed or maintained, shall have the right to such farm or private crossings over such railroad and railroad right of way as may be reasonably necessary or convenient for ingress to or egress from such lands, or in order to connect such lands with other adjacent lands of such owner or owners; and the owner or operator of such railroad shall construct and at all times maintain such farm or private crossing in a good, safe and passable condition; provided, that the Railroad Commission shall have the authority to determine the necessity for such crossing and the place, manner and conditions under which such crossing shall be constructed and maintained, and shall fix and assess the cost and expense thereof."

The proposed crossing will not lead to any public road lying west of the railroad track, but will connect with the drive-way through the school grounds, and, as has been stated, is situated entirely within the exterior boundaries of the County highway right of way, lying between the paved portion of the highway and the high school grounds. Notwithstanding this fact, no public crossing exists nor can exist until the approval of the Commission has first been obtained. Therefore until the crossing has received our sanction, the public has no right to cross the tracks for the purpose of entering or leaving the school grounds. This is necessarily so because of the questions of public necessity and public hazard which must first be determined before any crossing of a public highway over a railroad track may be established. Whether or not the crossing is public or private depends upon the nature of its use. Section 485a. of the Civil Code was intended primarily to grant to property owners the means of ingress to or egress from their land where the same has been cut off by a railroad line; when established it will

be used only by the owner and his family, their visitors or those having business with them, such a crossing not being designed for use by the general public, the owner having the right to exclude all persons from the crossing.

From the record in this case it appears that no such restriction will be imposed upon the use of the proposed crossing, since it will be used by the general public without any limitation whatever. While it is true that those who will use it to the greatest extent consist of pupils, teachers and those attending the meetings regularly held at the school, still there will be no inhibition of its use by anyone desiring to enter the school grounds. The determinative factor is that the crossing is open to use by all persons without any restriction; not the particular class or classes of persons who as a practical matter will make use of the crossing. It is well known that many public crossings are principally used by certain classes of persons, such as crossings serving farming districts, which are used primarily by farmers, or crossings serving large industrial plants, which are used principally by those having business with them, but nevertheless such crossings may be used by any person. We, therefore, conclude that the proposed crossing is a public crossing within the meaning of Section 43 of the Public Utilities Act and not a private crossing, as contemplated by Section 485a. of the Civil Code.

From the record in this proceeding, it is apparent to the Commission that the applicant, Napa Union High School District of Napa County, is not the proper applicant to initiate this proceeding for although it has exclusive control over the High School grounds and can lay out and establish driveways thereon, it has no legal authority to provide in the first instance for the construction or maintenance of a highway crossing lying within the

boundary of the public highway, the Board of Supervisors of Napa County being the proper body to establish the crossing upon authority of this Commission. Since the Board is not before us in this proceeding, no valid order can be made herein, requiring it to establish such crossing or to contribute county funds to its construction and maintenance. While it is true that in a proceeding brought by the Board of Supervisors the applicant herein may be required to contribute its funds to the establishment and up-keep of this crossing, it is apparent that it has no power to consent in the first instance to the construction of a crossing upon property in which it is not interested and over which it has no control. In view of the conclusion we have reached, the application will be dismissed without prejudice to the institution of a new proceeding by the County Board of Supervisors.

An order will be entered accordingly.

O R D E R

The Napa Union High School District of Napa County, having made application for an order authorizing the construction of a public crossing over the tracks of San Francisco, Napa and Calistoga Railway at a location near the City of Napa, Napa County, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision, therefore

IT IS HEREBY ORDERED that said application be and the same is hereby dismissed without prejudice to the filing of a similar

application by the Board of Supervisors of the County of Napa,  
and

IT IS HEREBY FURTHER ORDERED that the effective date  
of this order shall be twenty (20) days from and after the date  
hereof.

Dated at San Francisco, California, this 30<sup>th</sup> day  
of December, 1926.

H. B. Bourdige

O. N. Seamy

Leon Whitsett

Thos. Powell

Commissioners.